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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,841	12/08/2003	Kris Edward Hansen	005230.00007	9293
22907	7590	06/24/2004	EXAMINER	
BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			LE, TAN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/728,841	Applicant(s) HANSEN, KRIS EDWARD	
	Examiner Tan Le	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,8-10,18-30 and 34-44 is/are pending in the application.  
4a) Of the above claim(s) 1,8-10,23,26,30 and 34-44 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 18-22,24,25 and 27-29 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/08/03</u> | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

1. This is the first office action for Application No. 10/728,841. This application contains 28 pending claims numbered 1, 8-10, 18-30 and 34-44. Claims 2-7, 11-17 and 31-33 have been canceled by the preliminary amendment filed 12/08/03.
2. The IDS filed 12/08/03 has been considered.
3. Applicant's election without traverse of the invention Group II, the species XV-Figures 21-22 in the reply filed on 5/24/04 is acknowledged. Currently claims 18-22, 24-25 and 27-29 are readable on the elected species. An examination as follows:
4. Claims 1, 8-10, 23, 26, 30 and 34-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 18-22, 24-25 and 27-29 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14 and 16 of U.S. Patent No. 6,666,415. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent and the application are claiming common subject matter. It would have been obvious to one having ordinary skill in the art to make a guiding and support member claimed in this application as explicitly taught by claims 14 and 16 of Patent 6,427,963

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-22 and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,248,459 to Pate et al.

Pate et al. discloses a flexible conduit system comprising all the limitations as recited in claims 18-22 and 27-28 as evidently shown on Figs. 1, 4-7, or 8-11 for example.

***Allowable Subject Matter***

7. Claims 24-25 and 29 are objected to but would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims, and would be allowable if the double patenting rejection is overcome.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

767,893 to Jewell

6,135,398 to Quesnel

5,950,970 to Methany et al.

3,460,788 to Goldman

3,941,412 to Carpenter

683,312 to Marquardt

6,056,245 to White

The above patents disclose various types of flexible conduit supports or flexible pipe supports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244.

The examiner can normally be reached on Mon-Fri. from 9:00Am-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Te

Tan Le  
June 14, 2004.



LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER